

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 JONATHAN WEEMS,

12 Plaintiff,

13 vs.

14 CLARK, et al.,

15 Defendants.

1:21-cv-00531-GSA-PC

16 **ORDER FOR CLERK TO RANDOMLY
ASSIGN A UNITED STATES DISTRICT
JUDGE TO THIS CASE**

17 **AND**

18 **FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE
BE DISMISSED, WITHOUT
PREJUDICE, FOR PLAINTIFF'S
FAILURE TO COMPLY WITH COURT
ORDER**

19 **(ECF No. 10.)**

20 **OBJECTIONS, IF ANY, DUE IN
FOURTEEN (14) DAYS**

22 **I. BACKGROUND**

23 Jonathan Weems ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis*
24 with this civil rights action pursuant to 42 U.S.C. § 1983. On March 30, 2021, Plaintiff filed the
25 Complaint commencing this action. (ECF No. 1.) On March 16, 2022, Plaintiff filed the First
26 Amended Complaint as a matter of course. (ECF No. 8.) 28 U.S.C. § 1915A.

27 On December 6, 2022, the Court screened the First Amended Complaint and issued an
28 order dismissing it for failure to state a claim, with leave to amend within thirty days. (ECF No.

1 10.) On January 13, 2023, the Court granted Plaintiff's motion for a 14-day extension of time to
2 file the Second Amended Complaint. (ECF No. 12.) The 14-day time period has expired and
3 Plaintiff has not filed an amended complaint or any other response. Therefore, it will be
4 recommended that this case be dismissed for Plaintiff's failure to comply with the Court's order
5 issued on December 6, 2022. The Clerk shall be directed to randomly assign a United States
6 District Judge to this action.

7 **II. FAILURE TO COMPLY WITH COURT ORDER**

8 In determining whether to dismiss this action for failure to comply with the directives set
9 forth in its order, "the Court must weigh the following factors: (1) the public's interest in
10 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
11 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
12 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639,
13 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

14 "The public's interest in expeditious resolution of litigation always favors dismissal,"
15 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
16 action has been pending since March 30, 2021. Plaintiff's failure to respond to the Court's order
17 may reflect Plaintiff's disinterest in prosecuting this case. In such an instance, the Court cannot
18 continue to expend its scarce resources assisting a litigant who will not comply with the court's
19 orders. Thus, both the first and second factors weigh in favor of dismissal.

20 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in
21 and of itself to warrant dismissal." Id. (citing Yourish at 991). However, "delay inherently
22 increases the risk that witnesses' memories will fade and evidence will become stale," id., and it
23 is Plaintiff's failure to file an amended complaint and an application to proceed *in forma pauperis*
24 bearing his signature that is causing delay. Therefore, the third factor weighs in favor of
25 dismissal.

26 As for the availability of lesser sanctions, at this stage in the proceedings there is little
27 available to the Court which would constitute a satisfactory lesser sanction while protecting the
28 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions in this

1 circumstance are of little use, and given the early stage of these proceedings, the preclusion of
2 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in
3 this case is without prejudice, the Court is stopping short of issuing the harshest possible sanction
4 of dismissal with prejudice.

5 Finally, because public policy favors disposition on the merits, this factor will always
6 weigh against dismissal. Id. at 643.

7 **III. CONCLUSION, ORDER, AND RECOMMENDATIONS**

8 **A. ORDER**

9 Accordingly, **IT IS HEREBY ORDERED** that the Clerk of Court shall randomly assign
10 a United States District Judge to this case.

11 **B. RECOMMENDATIONS**

12 The Court **HEREBY RECOMMENDS** that this case be dismissed, without prejudice,
13 based on Plaintiff's failure to obey the Court's order issued on December 6, 2022.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
16 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file
17 written objections with the court. Such a document should be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
19 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
20 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
21 (9th Cir. 1991)).

22 IT IS SO ORDERED.

23 Dated: February 27, 2023

24 /s/ Gary S. Austin
25 UNITED STATES MAGISTRATE JUDGE